IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.435 OF 1995

1. Shri.Ramdas Dunda Kane]
Age 40 years,]
2. Shri.Ravji Kanha Dalvi]
Aged 37 years,]
Residing at Village]
Savad]
3. Shri.Damu Dunda Dalvi]
Aged 35 years]
4. Shri.Bandu Padu Patil,]
Aged 35 years,]
5. Shri.Bharirath Shankar]
Dalvi Age 36 years]
Nos.1, 3,4 and 5 all]
residing at Village]
Amane Taluka Bhiwandi,]
Dist. Thane.]..Appellants

Versus

1. The State of Maharashtra]
(Inspector of Padgha]
Police Station)]
2. Chandrakant Poshya Joshi]
r/o Ambegaon Taluka]
Bhiwandi, Dist. Thane.]..Respondents

....

Mr.Dipam Kathrani i/b A.P.Mundargi, Advocate for the Appellants
Mr.A.S.Shitole, A.P.P. for the State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellants-accused nos.1 to 5 challenge the judgment and order dated

9th August, 1995, passed by the learned Additional Sessions Judge, Thane in Sessions Case No.754 of 1993. By the said judgment and order, all the the appellants have been convicted under Sections 147, 148 and 323 read with Section 149 of IPC and each of them, was sentenced to suffer R.I. for one month and to pay a fine of Rs.100/- each i/d R.I. for fifteen days for the offence under Section 147 of IPC. Each of them, was sentenced to R.I. for two months and to pay a fine of Rs.200/- i/d R.I. for one month for the offence under Section 148 of IPC. Each of them, was sentenced to R.I. for three months and to pay a fine of Rs.100/- i/d R.I. for 15 days for the offence under Section 323 read with Section 149 of IPC. In addition thereto, appellant nos.3 and 4 were convicted for the offence under Section 324 read with Section 34 and Section 452 read with Section 34 of IPC. For the offence under Section 324 read with Section 34 of IPC both of them were sentenced to R.I. for three months and to pay a fine of Rs.100/- i/d R.I. for fifteen days. For the offence under Section 452 read with Section 34 of IPC, both of them were sentenced to R.I. for six months and to pay a fine of Rs.500/- i/d R.I. for one month.

2. Briefly stated the prosecution case is as under:

. The prosecution witnesses are residents of village Amane and P.W.2 Changunabai Dalvi is the deserted wife of accused no.2 Ravaji. Therefore, P.W.2 Changunabai Dalvi came to reside at the parental house at village Amane. All the five accused are close friends and are partners in the contractorship of accused no.1 Ramdas Kane. It is not in dispute that the relations between accused no.1 Ravaji and his wife P.W.2 Changunabai were strained.

3. On 1.12.1986, labourers of accused no.5 who was working as a supervisor for accused no.1, committed mischief in the field of P.W.2 Changunabai. Changunabai informed this incident to the complainant i.e. P.W.1 Chandrakant, who was her real brother. Due to this, Changunabai snatched away articles from the labourers of accused nos.1 and 5. Accused stated abusing. Due to these abuses, accused no.5 was annoyed. Accused nos.1 to 5 came to the house of P.W.1 Chandrakant at village Amane. They asked Chandrakant as to where Changunabai was. Chandrakant led the accused nos.1 to 5 to the place where the Changunabai was. Accused nos.1 and 2 gave fist blows to P.W.1

Changunabai and P.W.2 Chandrakant i.e. brother of P.W.2 Changunabai. P.W.1 Chandrakant questioned as to why they were assaulting. At that time, accused no.3 assaulted P.W.1 Chandrakant. Accused no.2 Ravji inflicted knife blow on the left thigh of P.W.2 Changunabai resulting into bleeding injury. P.W.1 and P.W.2 went to their house. They were followed by accused nos.3 and 4. These two accused broke open the door and entered inside the house and inflicted blows on the hands and legs of parents of P.W.1 and P.W.2 i.e. P.W.4 Sanglibai Joshi and deceased Poshya Joshi. Thereafter, these accused left the house. It is further the case of the prosecution that due to cries of P.W.1 Chandrakant and P.W. 2 Changunabai, P.W.3 Kalavati came there and she was also assaulted by accused no.5 Bhagirath. P.W.1 Chandrakant and P.W.2 Changunabai were removed to Padgha dispensary. F.I.R. of P.W.1 Chandrakant Joshi was recorded at the dispensary around 1 a.m. on 31.12.1986. Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed.

4. In due course the case was committed to the Court of Sessions. The charge came to be framed against the accused for the offence under Sections 147, 148, 149, 326, 336, 427 and 452 of IPC. In the

alternative, the accused were charged for the offence under Sections 326, 336,427 and 452 r.w. 34 of IPC. All the accused pleaded not guilty and claimed to be tried. After going through the evidence adduced by the prosecution, the learned Judge has convicted and sentenced the appellants as stated in para no.1 above. Hence, this appeal.

5. I have heard Mr.Dipam Kathrani, the learned advocate for the appellants and Mr.A.S.Shitole, the learned A.P.P. for the State. I have also perused the entire material on record. After carefully considering the matter, I am of the opinion that the learned Judge has rightly convicted all the accused for the offence under Sections 147,148, 323 read with Section 149 of IPC and in addition thereto, the accused nos.3 and 4 for the offence under Sections 324 and 452 read with section 34 of IPC.

6. The conviction of the appellants is mainly founded on the evidence of P.W.1 Chandrakant, P.W.2 Changunabai, P.W.3 Kalavati and P.W.4 Sanglibai Joshi. P.W.1 Chandrakant has stated that on 2.12.1986, all the five accused came to his house and they enquired as to where his sister Changunabai was. Chandrakant showed the place where Changunabai was. Thereupon, the accused no.2 Ravji gave kick

blows to his sister P.W.2 Changunabai. Ravji also inflicted knife blow to Changunabai on her left thigh. Accused no.3 Damu gave fist blow on the abdomen of Chandrakant. Both P.W.1 Chandrakant and P.W.2 Changunabai ran to their house and hid on the loft of their house. Both the accused i.e. accused no.3 Damu and accused no.4 Bandu broke open the door, entered inside and assaulted the parents of Chandrakant and Changunabai with sword. The injuries were caused to the fingers, hand and leg of P.W.5 Sanglibai Joshi i.e. mother of P.W.1 Chandrakant and P.W. 2 Changunabai. The blows were inflicted on the fingers and hand of Sanglibai by accused no.3 Damu and accused no.4 Bandu inflicted injuries on the thigh of Sanglibai Joshi. At that time, P.W.5 Eknath Bhoir arrived there and accused no.3 Damu inflicted sword blows on the left hand of Eknath. Thereafter, these two accused left the house. In spite of searching cross-examination, nothing has been elicited in the cross examination of this witness so as to discredit his testimony.

7. The evidence of P.W.1 Chandrakant is corroborated by the medical evidence. P.W.10 Dr. Shrikrishan Dhone examined P.W.1 Chandrakant and found the following injuries on his person:

. 1. Abrasion over left side of chest they were three in number. 2"x2"x1/2"x1/2"x2"x2".

. 2. Contused abrasion over right arm lower 1/33rd 2" x 1".

. 3. Contused abrasion left side of the back 3" x 1".

. 4. Contused lacerated wound over left iliac chest 1" x 1".

. 5. Contusion on right knee joint 2" x 2".

. Dr.Dhone has opined that the injuries were possible by stick and iron bar. The injuries were possible by hard and blunt object. However, Dr.Dhone has stated that the injuries were simple in nature.

8. The evidence of P.W.1 Chandrakant is corroborated in all material particulars by the evidence of P.W.2 Changunabai. She was also injured in the said incident. Her evidence is on similar lines as that of P.W.1 Chandrakant. Her evidence is corroborated by the medical evidence. P.W.8 Dr.Bhave noticed contusion on right forearm and left thigh on her person. In the opinion of Doctor, injuries could have been caused by hard and blunt object.

9. This incident had taken place into two parts. In the first part of the incident, Changunabai and Chandrakant received injuries. Thereafter, they ran to their house and took shelter. Thereafter, accused no.3 Damu and accused no.4 Bandu followed them, broke open the door of the house and assaulted the parents of P.W.1 Chandrakant and P.W.2 Changunabai i.e. P.W.5 Sanglibai Joshi and Poshya Joshi. P.W.5 Sanglibai has stated that on 2.12.1986 at about 8 p.m. all the accused persons had come to her house at 8 p.m. They asked about where Changunabai was and Chandrakant took them where Changunabai was. Thereafter, Changunabai and Chandrakant came running to their house. They entered the house and locked the door. However, accused no.3 Damu and accused no.4 Bandu broke open the door and entered the house. Thereafter accused no.3 Damu and accused no.4 Bandu gave sword blows to her and her husband Poshya Joshi. Thereafter, these accused persons went away. There is nothing in the cross examination of P.W.5 Sanglibai so as to discredit her testimony relating to the incident of assault on her and her husband. The evidence of P.W.5 Sanglibai is corroborated by the medical evidence. P.W.5 Sanglibai was examined by P.W.8 Dr.Bhave and he noticed the following injuries on her person:

. 1. Incised wound 4"x2" tendent deep dorsum on forearm.

. 2. Incised wound index finger middle and promixaml phalanx of 3rd and 4th finger and middle phalanx of little finger. All bone deep.

. 3. Contused lacerated wound 4" x 2" muscle deep above left knee."

. Doctor has opined that injury no.2 could have been caused by sharp object and injury no.3 could have been caused by blunt object. It is the specific case of the prosecution that accused no.3 and 4 broke open the door of the house of Chandrakant and Changunabai and entered inside the house. Accused nos.3 and 4 assaulted her and her husband with sword. In this view of the matter, the learned Judge has rightly convicted the accused nos.3 and 4 for the offences under Section 324 and Section 452 read with Section 34 of IPC.

10. Looking to the evidence of P.W.1 Chandrakant and P.W.2 Changunabai and other evidence on record, I am of the opinion that the learned Sessions Judge has rightly convicted the accused nos.1 to 5 for the offence under Sections 147, 148 and 323 read with Section 149 of IPC.

11. At this stage, the learned advocate for the appellants has submitted that the incident had occurred in 1988 i.e. almost 16 years have passed since the incident. The learned advocate for the appellants has submitted that after that though the appellants were on bail, there is nothing to show that any untoward incident had occurred between the accused persons and the prosecution witnesses. He has further submitted that the family members are dependent on the appellants. Thus, he has submitted that sentence imposed on the appellants may be reduced to the period undergone by them.

12. Looking to the fact that more than 16 years have passed after the incident and the other facts and circumstances, I am inclined to reduce the sentence of imprisonment in case of all the appellants to the period already undergone by them.

13. In view of the above, the judgment and order of conviction imposed by the learned VIth Additional Sessions Judge, Thane in Sessions Case No. 754 of 1993 dated 9th August, 1995 is confirmed. However, the sentence of imprisonment in case of all the appellants is reduced to the period already undergone by each of them. The fine amount as imposed by the learned Judge has already been

deposited by the appellants. The appellants are on bail. Their bail bonds shall stand cancelled.

. Appeal is partly allowed in the above terms.

[V.K.TAHILRAMANI.J]